

117TH CONGRESS  
1ST SESSION

# H. R. 1722

To amend titles XI and XIX of the Social Security Act to stabilize the Medicaid program in Puerto Rico.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 2021

Ms. VELÁZQUEZ (for herself, Mr. ESPAILLAT, Ms. OCASIO-CORTEZ, Mr. GARCÍA of Illinois, Mr. GRIJALVA, and Miss GONZÁLEZ-COLÓN) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend titles XI and XIX of the Social Security Act  
to stabilize the Medicaid program in Puerto Rico.

1       *Be it enacted by the Senate and House of Representa-  
2       tives of the United States of America in Congress assembled,*

**3 SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Puerto Rico Health  
5 Care Fairness, Accountability, and Beneficiary Access Act  
6 of 2021”.

1 SEC. 2. ADJUSTMENTS TO FMAP AND CAP FOR PUERTO  
2 RICO.

3       (a) ADJUSTMENTS TO FMAP.—Section 1905 of the  
4 Social Security Act (42 U.S.C. 1396d) is amended—

10 (2) by adding at the end the following new sub-  
11 section:

12        "(hh) PR SPECIFIED PERCENT.—

13               “(1) IN GENERAL.—For purposes of subsection  
14               (b), the PR specified percent under this subsection  
15               is—

16                         “(A) subject to paragraph (2), for each of  
17                         fiscal years 2022 through 2026, 83 percent;

18                 “(B) subject to paragraph (3)(D)(iii), for  
19                 each of fiscal years 2027 through 2031, 83 per-  
20                 cent; and

“(C) subject to paragraph (3)(D)(iii), for fiscal year 2032 and each subsequent fiscal year, the Federal medical assistance percentage calculated in accordance with the first sentence of subsection (b), as such sentence applies to the 50 States.

1       “(2) PROGRAM ENHANCEMENT INCENTIVES.—

2           “(A) IN GENERAL.—If Puerto Rico—

3                  “(i) for fiscal year 2023, is in compliance  
4                  with none of the program enhancement require-  
5                  ments described in subparagraph (B), the PR  
6                  specified percent specified under paragraph (1)  
7                  for such fiscal year shall be reduced by 2 per-  
8                  cent;

9                  “(ii) for fiscal year 2024, is in compliance  
10                 with fewer than two of the four program en-  
11                 hancement requirements described in subpara-  
12                 graph (B), the PR specified percent specified  
13                 under paragraph (1) for such fiscal year shall  
14                 be reduced by 3 percent;

15                 “(iii) for fiscal year 2025, is in compliance  
16                 with fewer than three of the four program en-  
17                 hancement requirements described in subpara-  
18                 graph (B), the PR specified percent specified  
19                 under paragraph (1) for such fiscal year shall  
20                 be reduced by 5 percent; and

21                 “(iv) for fiscal year 2026, is in compliance  
22                 with fewer than four of the program enhance-  
23                 ment requirements described in subparagraph  
24                 (B), the PR specified percent specified under

1           paragraph (1) for such fiscal year shall be re-  
2           duced by 5 percent.

3           “(B) PROGRAM ENHANCEMENT REQUIRE-  
4           MENTS.—For purposes of this subsection, the pro-  
5           gram enhancement requirements described in this  
6           subparagraph are each of the following:

7                 “(i) Rates of payment under the State  
8                 plan under this title for inpatient hospital serv-  
9                 ices are not less than the costs incurred for  
10                such services.

11                “(ii) Rates of payment under the State  
12                plan under this title for physicians’ services are  
13                not less than 70 percent of the amount that is  
14                payable for such services under section 1848.

15                “(iii) The State plan provides for medical  
16                assistance for Hepatitis C drugs, in accordance  
17                with the requirements of section 1927 otherwise  
18                applicable to the 50 States.

19                “(iv) The State plan provides for medical  
20                assistance for Medicare cost-sharing described  
21                in subsection (p)(3)(A)(ii) for qualified Medi-  
22                care beneficiaries described in subsection (p)(1),  
23                in accordance with the requirements under sub-  
24                section (p) otherwise applicable to the 50  
25                States.

1       “(3) TERRITORY TRANSITION PLAN.—

2           “(A) IN GENERAL.—

3                  “(i) SUBMISSION OF PLAN.—Not later  
4                  than January 1, 2024, the Governor of Puerto  
5                  Rico shall submit to the Secretary a Territory  
6                  Transition Plan, which shall be developed with  
7                  stakeholder input and with a public comment  
8                  period, that includes—

9                   “(I) a detailed description of which  
10                  program enhancements described in sub-  
11                  paragraph (C) Puerto Rico will include as  
12                  medical assistance under the State plan  
13                  under title XIX, the first plan year by  
14                  which each such program enhancement will  
15                  be so included in order to satisfy the re-  
16                  quirements described in subparagraph (B),  
17                  and a timeline for milestones for including  
18                  such program enhancements; and

19                   “(II) a description of any challenges,  
20                  including infrastructure challenges, pro-  
21                  vider shortages, and financing challenges,  
22                  for so including such program enhance-  
23                  ments and a plan to ameliorate any such  
24                  challenges.

1                 “(ii) NOTIFICATION OF PLAN APPROVAL.—

2                 The plan submitted under clause (i) shall be  
3                 treated as approved by the Secretary not later  
4                 than 180 days after the date of submission of  
5                 the plan unless within such 180-day period the  
6                 Secretary disapproves such plan and notifies  
7                 Puerto Rico of such disapproval with the reason  
8                 for such disapproval. In the case of such a dis-  
9                 approval, the Governor of Puerto Rico shall,  
10                 within the 90-day period following such notifi-  
11                 cation, submit to the Secretary a Territory  
12                 Transition Plan that addresses the reason spec-  
13                 ified in such notification for such disapproval.  
14                 Such resubmitted plan shall be treated as ap-  
15                 proved by the Secretary under this clause un-  
16                 less the Secretary notifies Puerto Rico within  
17                 the 30-day period following such submission of  
18                 its disapproval with a reason for such dis-  
19                 approval. The Governor of Puerto Rico may de-  
20                 velop and submit to the Secretary, in the same  
21                 manner and subject to the same conditions as  
22                 apply under clause (i) to the development and  
23                 submission of the Territory Transition Plan,  
24                 modifications to the plan and such modifica-  
25                 tions shall be treated as approved by the Sec-

1           retary and incorporated into the plan in the  
2           same manner and subject to the same condi-  
3           tions that apply under this clause to the ap-  
4           proval of the plan.

5           “(B) REQUIREMENTS DESCRIBED.—For pur-  
6           poses of this paragraph, the requirements described  
7           in this subparagraph, with respect to Puerto Rico,  
8           are the following:

9                 “(i) For 2029, the State plan under title  
10           XIX includes at least 2 of the program en-  
11           hancements described in subparagraph (C).

12                 “(ii) For 2031, the State plan includes at  
13           least 4 of such program enhancements.

14                 “(iii) For 2033, the State plan includes at  
15           least 6 of such program enhancements.

16                 “(iv) For 2035 and each subsequent year,  
17           the State plan includes all of such program en-  
18           hancements.

19           “(C) PROGRAM ENHANCEMENTS DESCRIBED.—  
20           For purposes of this paragraph, the program en-  
21           hancements described in this subparagraph are the  
22           following:

23                 “(i) The State plan provides for medical  
24           assistance to all individuals described in clause  
25           (i) of section 1902(a)(10)(A)).

1                 “(ii) The State plan provides for inclusion  
2                 as medical assistance of home health services,  
3                 in accordance with section 1902(a)(10)(D).

4                 “(iii) The State plan provides for inclusion  
5                 as medical assistance of nonemergency trans-  
6                 portation to medically necessary services.

7                 “(iv) The State plan provides for inclusion  
8                 as medical assistance of services described in  
9                 subsection (a)(21) to all individuals described in  
10                clause (i) of section 1902(a)(10)(A).

11                “(v) The State plan provides for inclusion  
12                as medical assistance of services described in  
13                subsection (a)(17) to all individuals described in  
14                such clause (other than subclause (VIII) of  
15                such clause.

16                “(vi) The State plan provides for inclusion  
17                as medical assistance of nursing facility serv-  
18                ices, as defined in subsection (a)(4)(A).

19                “(vii) The State plan provides for inclusion  
20                as medical assistance of early and periodic  
21                screening, diagnosis, and treatment services  
22                under subsection (a)(4)(B).

23                “(viii) The State plan provides for inclu-  
24                sion as medical assistance of freestanding birth

1 center services and other ambulatory services,  
2 as described in subsection (a)(28).

3 “(D) REPORTS.—

4 “(i) For fiscal year 2024 and each subse-  
5 quent fiscal year through fiscal year 2035—

6 “(I) the Comptroller General of the  
7 United States shall review, and submit to  
8 the Secretary and Congress a report on,  
9 whether or not Puerto Rico is in compli-  
10 ance with the timeline and achieving the  
11 milestones described in the Territory Tran-  
12 sition plan (as modified, if applicable) ap-  
13 proved under subparagraph (A) and, be-  
14 ginning with fiscal year 2029, whether  
15 Puerto Rico is in compliance with the ap-  
16 plicable requirements described in subpara-  
17 graph (B); and

18 “(II) Puerto Rico shall submit to the  
19 Secretary a report on the extent to which  
20 Puerto Rico has met the timelines and  
21 milestones included in such plan (as modi-  
22 fied, if applicable).

23 “(ii) If, for a fiscal year described in clause  
24 (i) after fiscal year 2026, the Comptroller Gen-  
25 eral submits a report with a finding that Puerto

1           Rico is not in compliance with the timeline or  
2           with achieving milestones as described in sub-  
3           clause (I) (or, with respect to a fiscal year after  
4           fiscal year 2028, not in compliance with the ap-  
5           plicable requirement under subparagraph (B)),  
6           not later than 90 days after the date of such  
7           finding, Puerto Rico shall submit to the Sec-  
8           retary for approval a corrective action plan to  
9           remedy such noncompliance.

10           “(iii) If, by not later than a period speci-  
11           fied by the Secretary after the date of the sub-  
12           mission (and approval) of a corrective action  
13           plan under clause (ii), with respect to a fiscal  
14           year after fiscal year 2026 for which a finding  
15           of non-compliance was made under clause (i),  
16           the Secretary determines that Puerto Rico has  
17           not fulfilled the terms of such corrective action  
18           plan, the PR specified percent specified under  
19           paragraph (1) for the fiscal year involved shall  
20           be reduced by 5 percent for the period begin-  
21           ning with the month beginning after such deter-  
22           mination and ending with the first month be-  
23           ginning after the Secretary determines Puerto  
24           Rico has fulfilled the terms of the corrective ac-  
25           tion plan.”.

1       (b) TREATMENT OF CAP.—Section 1108(g) of the  
2 Social Security Act (42 U.S.C. 1308(g)) is amended—

3           (1) in paragraph (2)—

4              (A) in the matter preceding subparagraph  
5              (A), by striking “subject to and section  
6              1323(a)(2) of the Patient Protection and Af-  
7              fordable Care Act paragraphs (3) and (5)” and  
8              inserting “subject to section 1323(a)(2) of the  
9              Patient Protection and Affordable Care Act and  
10             paragraphs (3), (5), and (7); and

11              (B) in subparagraph (A)—

12                  (i) by striking “Puerto Rico shall not  
13                  exceed the sum of” and inserting “Puerto  
14                  Rico shall not exceed—

15                  “(i) in the case of a fiscal year before  
16                  fiscal year 2022, the sum of’;

17                  (ii) by striking “\$100,000;” and in-  
18                  serting “\$100,000; and”; and

19                  (iii) by adding at the end the fol-  
20                  lowing new clause:

21                  “(ii) in the case of fiscal year 2022  
22                  and each subsequent fiscal year (before fis-  
23                  cal year 2027), the amount specified in  
24                  paragraph (6) for such fiscal year;”; and

1                             (2) by adding at the end the following new  
2                             paragraphs:

3                             “(6) APPLICATION TO PUERTO RICO FOR FIS-  
4                             CAL YEARS 2022 THROUGH 2026.—For purposes of  
5                             paragraph (2)(A)(ii), the amount specified in this  
6                             paragraph is—

- 7                             “(A) for fiscal year 2022, \$3,012,610,000;  
8                             “(B) for fiscal year 2023, \$3,114,331,000;  
9                             “(C) for fiscal year 2024, \$3,225,627,000;  
10                            “(D) for fiscal year 2025, \$3,336,627,000;  
11                            and  
12                             “(E) for fiscal year 2026, \$3,447,627,000.

13                             “(7) PUERTO RICO EXCLUSION FROM PAYMENT  
14                             LIMITATION BEGINNING FISCAL YEAR 2027.—Begin-  
15                             ning with fiscal year 2027, there shall be no limita-  
16                             tion applied under this subsection (f) or this sub-  
17                             section on the total amount certified by the Sec-  
18                             retary under title XIX for payment to Puerto  
19                             Rico.”.

20                             (c) TEMPORARY INCREASE IN FEDERAL MATCH FOR  
21                             STATE PLAN ADMINISTRATIVE COSTS.—Section  
22                             1903(a)(7) of the Social Security Act (42 U.S.C.  
23                             1396b(a)(7)) is amended by inserting “(or, in the case of

- 1 Puerto Rico for each of fiscal years 2022 through 2035,
- 2 100 percent)” after “50 per centum”.

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